

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUAN SANCHEZ

*Plaintiff,*

*-against-*

WESLEY SMITH DALLAS, WESLEY SMITH  
DALLAS d/b/a DALLAS TRUCKING, CLINTON  
DORRIS, CLINTON DORRIS a/k/a HOMER  
CLINTON DORRIS, and CLINTON DORRIS  
d/b/a EVERY SAVINGS POSSIBLE

*Defendants.*

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08 CV 0055

REPLY AFFIRMATION  
IN SUPPORT OF  
MOTION TO REMAND

Judge Cedarbaum

LARRY DORMAN, an attorney duly admitted to practice in the United States District Court for the Southern District of New York, affirms the truth of the following under penalty of perjury:

1. I am counsel to the plaintiff, JUAN SANCHEZ, and submit this reply affirmation in further support of plaintiff's motion to remand.
2. As the opposing papers point out, the Bronx County action was commenced on October 12, 2007, prior to the defendant's bankruptcy filing on November 16, 2007. Thus, the action was not commenced in violation of the bankruptcy stay.
3. The defendants argue that the subsequent service of process on defendant DALLAS is a nullity, but cite no authority for that proposition.

4. The automatic stay provision of 11 USC § 362[a][1] has been interpreted to allow New York State courts to obtain jurisdiction over defendants who have filed for bankruptcy protection, but that such actions are stayed from continuation of judicial proceedings. *Kleinsleep Prods. v. McCrory Corp.*, 271 A.D.2d 411, 708 N.Y.S.2d 296 (2<sup>nd</sup> Dept. 2000); *International Fid. Ins. Co. v. European Amer. Bank*, 129 A.D.2d 697, 514 N.Y.S.2d 441 (2<sup>nd</sup> Dept. 1987); *Hymil Assoc. v. Scott*, 12 Misc.3d 34, 816 N.Y.S.2d 814 (App. Term, 1<sup>st</sup> Dept. 2006).

5. As such, the Supreme Court of Bronx County has obtained jurisdiction over defendant DALLAS. Thus, as argued in the moving papers, defendant DALLAS has not consented to removal, individually or by authority of the bankruptcy court, rendering the Notice of Removal defective as it violates the “rule of unanimity.”

WHEREFORE, it is respectfully requested that this action be remanded to the Supreme Court of Bronx County.

Dated: Astoria, New York  
March 4, 2008

Respectfully submitted,



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